

**806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.**

RELATES TO: 2012 Ky. Acts ch. 144, Part XII, secs. 1-8,12, KRS 304.1-050(2), 304.2-310, 304.9-020(1), 304.17A-005(22)

STATUTORY AUTHORITY: KRS 304.2-110(1), 2012 Ky. Acts ch. 144, Part XII, secs. 1(2), 1(3), 2(5).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2012 Ky. Acts ch. 144, Part XII, sec. 1(2) and (3) require the department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2012 Ky. Acts ch. 144, Part XII, sec. 2(5) requires the department to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program renewal application" means the ICARE Program renewal application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300 percent of the federal poverty level or below, which may include the employer's:

1. Quarterly unemployment tax statement; or
2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan if:

1. The employer group is participating in the ICARE Program as a previously uninsured group; or

2. The employer group is participating in the ICARE Program under the high cost condition category and the employer group has changed coverage during the ICARE Program year;

(c) Employee ICARE Program high-cost condition certification, if applicable; and

(d) Any additional attachments, if applicable.

(3) "Department" is defined in KRS 304.1-050(2).

(4) "Eligible employee" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(3).

(5) "Eligible employer" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(2).

(6) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(7) "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(8) "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

(9) "Health benefit plan" is defined in KRS 304.17A-005(22).

(10) "Health care incentive payment" means a payment as established in 2012 Ky. Acts ch. 144, Part XII, secs. 2(3) and 4(1).

(11) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2012 Ky. Acts ch. 144, Part XII, sec. 2(1).

(12) "ICARE Program high-cost condition" means a high-cost condition as:

(a) Defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(5); and

(b) Established in 806 KAR 17:540.

(13) "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(14) "ICARE Program participating insurer" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(6).

(15) "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(16) "Insurer" is defined in KRS 304.17A-005(27).

(17) "Qualified health benefit plan" is defined in 2012 Ky. Acts ch. 144, Part XII, sec. 1(8).

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2012 Ky. Acts ch. 144, Part XII, sec. 1(2), the department shall consider:

(a) Full time employees; and

(b) Full time equivalents rounded to the nearest whole number.

(2) The average annual salary of the employer group shall not exceed 300 percent of the most current federal poverty level for a family of three (3). To determine the average annual salary of the employer group pursuant to 2012 Ky. Acts ch. 144, Part XII, sec. 2(4), the department shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee:

1. With an ownership interest in the business;

2. Who is a Medicare-eligible employee;

3. Who has attained age sixty-five (65); or

4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of the business.

Section 3. Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the department within thirty (30) days of the date of the change.

Section 4. Renewal of ICARE Program Participation.

(1) At least sixty (60) days prior to the ICARE Program year renewal date, the department shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the department:

- (a) A written request for renewal of ICARE Program participation;
  - (b) A complete ICARE Program renewal application; and
  - (c) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2012 Ky. Acts ch. 144, Part XII, secs. 1 through 8.
- (3) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of a renewal application for the ICARE Program by:
- (a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;
  - (b) Completing section 3 of the ICARE Program renewal application of the employer; and
  - (c) If applicable:
    - 1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application; and
    - 2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.
- (4) Within thirty (30) days of receiving a request for renewal, the department shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 5. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

- (a) The department determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2012 Ky. Acts ch. 144, Part XII, secs. 1 through 8:
    - 1. Upon completion of an annual review for the ICARE Program year reviewed; or
    - 2. Upon review of a request for renewal of ICARE Program Participation;
  - (b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2012 Ky. Acts ch. 144, Part XII, sec. 4(5);
  - (c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application;
  - (d) The employer requests termination from the ICARE Program;
  - (e) The employer ceases business operations in Kentucky; or
  - (f) The employer fails to cooperate in an annual review as described in Section 8 of this administrative regulation.
- (2) Prior to terminating an ICARE Program participating employer, the department shall provide written notification to the employer, which shall include:
- (a) The reason for termination as identified in subsection (1) of this section;
  - (b) The termination date, which shall be:
    - 1. If terminated for fraud or misrepresentation, the date of the written notification; or
    - 2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and
  - (c) Instructions for filing an appeal if dissatisfied with the termination.

Section 6. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 of this administrative regulation or termination by the department pursuant to Section 5 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing. A request for reconsideration shall include:

- (a) A description of the basis for reconsideration; and

(b) Any new relevant information including documentation to support eligibility as established in Section 2 of this administrative regulation and 2012 Ky. Acts ch. 144, Part XII, secs. 1 through 8 that was not provided with the written request for renewal.

(2) The department shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the department's determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 7. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The department shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2012 Ky. Acts ch. 144, Part XII, sec. 4(1) for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the department based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the department all health care incentive payments received by the employer for the period of ineligibility determined by the department.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2012 Ky. Acts ch. 144, Part XII, sec. 4(1).

Section 8. Annual Review. The department may make or cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2012 Ky. Acts ch. 144, Part XII, secs. 1 through 8; 806 KAR 17:540 and 17:555; and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 9. Response to Department Inquiry. If an employer receives an inquiry from the department relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 10. Incorporation by Reference. (1) "ICARE-APP-1", 6/2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department Web site at <http://insurance.ky.gov>. (33 Ky.R. 1473; Am. 1843; 2302; eff. 3-9-2007; 34 Ky.R. 398; 1427; eff. 1-4-2008; 35 Ky.R. 668; eff. 1-5-2009; 37 Ky.R. 504; eff. 11-5-2010; 38 Ky.R. 129; 601; eff. 10-7-11; 39 Ky.R. 615; eff. 12-7-2012.)